

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHWESTERN DIVISION**

United States of America,)	
)	
Plaintiff,)	ORDER ADOPTING
)	REPORT AND RECOMMENDATION
vs.)	
)	
Darry D. Neff, a/k/a Darry Dean)	
Neff, Beverly Ann Neff, a/k/a)	
Beverly Neff, Wilbert Neff,)	
Ida Neff, individually and as Personal)	Case No. 4:05-cv-128
Representative of the Estate of Arthur Neff;)	
Smith Bakke Hovland & Oppegard, et. al.,)	
)	
Defendants.)	

Before the Court is an Application for Surplus Proceeds filed by the Government, a Motion for Disbursement of Funds filed by Defendant Smith Bakke Hovland & Oppegard¹ (Smith), and a Motion for Disbursement of Funds as well as a Claim of Homestead Exemption filed by Defendant Wilbert Neff (Neff). The Court referred these motions to Magistrate Judge Charles S. Miller, Jr., for a Report and Recommendation. On February 22, 2007, Judge Miller issued a Report and Recommendation wherein he recommended that the surplus proceeds attributable to the sale of Lot 4 (\$21,926.92) be paid to Smith and the balance of the surplus proceeds (\$79,727.79) be paid to Neff. The United States filed an objection to the Report and Recommendation on March 8, 2007.

The Court has carefully reviewed the Report and Recommendation, the Government's objection, the relevant case law, and the record as a whole and finds the Report and

¹Now known as Smith Bakke Porsborg & Schweigert.

Recommendation to be persuasive, thorough, and accurate. It is clear to the Court that Neff did not abandon his homestead and that the waiver of homestead rights in the real estate mortgage is not effective as to the chattel debt. Also, Smith may have transposed some figures in making his claim but the figures Judge Miller used in calculating Smith's claim are indisputably correct and accuracy is the Court's preference.

Accordingly, the Court **ADOPTS** the Report and Recommendation in its entirety and **GRANTS** Smith's motion for disbursement of funds and Neff's motion for disbursement of funds. The Court **DENIES** the Government's motion for disbursement of funds.

Based on the foregoing, it is hereby **ORDERED** that surplus proceeds be disbursed as follows:

1. \$21,926.92 to Smith Bakke Porsborg & Schweigert at P.O. Box 460, Bismarck, ND 58502-0460.
2. \$79,727.79 to Wilbert Neff in care of Walter Lipp at P.O. Box 590, McClusky, ND 58463-0590.

The Court recognizes that the Government has 60 days to file an appeal. In recognition of this and in order to give the Government time to consider its options, the Court will further **ORDER** that the surplus proceeds not be disbursed until April 11, 2007.

IT IS SO ORDERED.

Dated this 12th day of March, 2007.

/s/ Patrick A. Conmy
Patrick A. Conmy, Senior District Judge
United States District Court